

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

**JACKY STEWART and BRANDY
ANDERSON, individually, and on behalf
Of all others similarly situated,**

Plaintiffs,

Case No. 1:15-cv-01162

v.

**JURY DEMAND
FLSA COLLECTIVE ACTION**

**FLOWERS FOODS, INC., and FLOWERS
BAKING CO. OF BATESVILLE, LLC,**

Defendant.

DECLARATION OF MICHAEL L. RUSSELL

I, Michael L. Russell, hereby declare as follows pursuant to 28 U.S.C. § 1746:

1. My name is Michael L. Russell and the statements contained herein are based on my personal knowledge.
2. I am an attorney licensed to practice law in the State of Tennessee. I am admitted to practice before the United States Supreme Court, Tennessee Supreme Court, the United States District Court for the Western District of Tennessee, the United States District Court for the Middle District of Tennessee, the United States District Court for the Eastern District of Tennessee, the United States District Court for the Eastern District of Arkansas, the United States District Court for the Western District of Arkansas, and the United States Court of Appeals for the Sixth Circuit.

3. My practice is devoted almost exclusively to labor and employment law. Most of my practice is spent on labor and employment litigation. I am also a Rule 31 listed mediator, and a portion of my time is also spent as a neutral in labor and employment mediations.
4. I graduated Phi Beta Kappa and Summa Cum Laude from the University of Tennessee, Knoxville (B.A., 1996). I received my law degree (J.D., 1999) from the University of Memphis, where I graduated Magna Cum Laude and was a Humphreys Law Fellow. As a law student, I served as National Chairman of the 45th National Conference of Law Reviews in Cincinnati, Ohio.
5. I am the immediate past chair of the Tennessee Bar Association Labor and Employment Section.
6. I am the current president of the Nashville chapter of the Federal Bar Association.
7. I have been asked to lecture on the topic of labor and employment law on many occasions. Most recently, I've spoken at the 2017 ABA Federal Labor Standards Legislation Committee Mid-Winter Meeting in Playa del Carmen, Mexico, the 2015 D.R.I. Labor and Employment Conference in Scottsdale, Arizona and the 2015 Sixth Circuit Judicial Conference in Detroit, Michigan.
8. I am currently scheduled to speak at the 2017 National Employment Lawyers Convention in San Antonio, Texas, the 2017 DRI Labor and Employment Conference in Nashville, and the 2017 Tennessee Bar Association Labor and Employment Forum.
9. I have been asked to speak on the topic of labor and employment law by the American Bar Association, the Tennessee Bar Association, the Federal Bar

Association, the Memphis Bar Association, the Williamson County Bar Association, the Tipton County Bar Association, and the Nashville Bar Association.

10. I currently teach a course at the Belmont University College of Law each spring. In the past, I have served on the adjunct faculty at Lambuth University and the University of Tennessee at Martin.
11. I have published articles in the *American Journal of Trial Advocacy*, the *University of Memphis Law Review*, the *Ohio Northern University Law Review*, the *Seton Hall Constitutional Law Journal*, and *Employee Rights Quarterly*. One of my articles was cited in testimony before the United States Congress.
12. I have tried numerous cases in both federal and state courts. In the last six years, I have tried six jury trials and two bench trials in courts of record. All of those were employment law cases. Three of those were FLSA cases. Since the beginning of 2016, I estimate I have conducted about seventy-five employment mediations as a neutral. I believe I am well-versed in the area of employment law generally and wage and hour law specifically.
13. I am a partner in the law firm of Gilbert Russell McWherter Scott Bobbitt PLC. I have practiced with my firm for over sixteen (16) years. I was in private practice in Memphis before joining my current firm.
14. I have previously been approved by the Middle District of Tennessee at an hourly rate of \$450. However, the billing for this matter reflects a rate of \$400.00 per hour. In my opinion, an hourly rate of \$400.00 for a partner is reasonable for lawyers with significant experience in this type of litigation. Furthermore, an hourly rate of \$275.00 per hour is appropriate for associates in this type of class litigation.

15. I am one of two attorneys in my firm that worked on this case, but I had primary responsibility for the prosecution of this action. I collected the time records for our law firm detailing our representation of Plaintiffs. Those time records are attached. The following chart contains the information submitted by my firm, broken out by lawyer, regarding time spent as of March 20, 2017.

ATTORNEY	HOURS	HOURLY RATE	TOTAL
Michael Russell	69.75	\$400.00	\$27,900.00
Emily Emmons	88.00	\$275.00	\$24,200.00
TOTAL	157.75		\$52,100.00

16. The last time entry in the attached billing records is for March 20, 2017. The attorneys in my firm have billed additional time since this date. For example this declaration is being finalized and executed after March 20, 2017. Therefore, actual attorney's fees are higher than reflected in the billing records that have been provided. However, we have not included the additional time for convenience.
17. I have personally reviewed the time records of each attorney representing Plaintiffs, and all time billed was reasonably necessary to achieve the successful outcome achieved for Plaintiffs in this case. In my judgment, there is not any time for which compensation is now requested in this case that was excessive, redundant, or otherwise unnecessary.
18. The total attorney's fees based on the above hourly rates for attorneys in my firm equal \$52,100.00. My firm expended all of this time and resources without any assurance of compensation for our work. This does not include the work of my co-counsel's firm.

19. In addition, my firm has advanced expenses in the amount of \$1,536.28. A detailed breakdown of those expenses is contained on the attached billing summary. They consist exclusively of deposition expenses, mileage, and copies.

20. I have attempted to exercise "billing judgment" in this fee request. For example, I have omitted all time entries for paralegals and some time entries of my associate, Ms. Emmons.

I declare that the foregoing is true and correct.



Michael L. Russell

Date: March 23, 2017

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Jacky Stewart, et al. v. Flowers Foods, Inc., et a

Draft Statement

Fees

			Rate	Hours	
10/14/2015	MLR	TC with Mike Weinman; review pleadings; review related litigation	400.00	2.50	1,000.00
10/15/2015	MLR	Meeting with Emily Emmons regarding drafting project and facts of case	400.00	0.50	200.00
10/19/2015	MLR	TC with Mike Weinman re: litigation strategy	400.00	0.50	200.00
10/30/2015	MLR	Conference call with Mike Weinman regarding status and future course	400.00	0.75	300.00
11/06/2015	ESE	Draft Motion for Conditional Cert	275.00	4.00	1,100.00
11/13/2015	ESE	Review Flower Foods Summary Judgment Motion	275.00	3.00	825.00
11/18/2015	ESE	Research Motor Carrier Exemption	275.00	4.00	1,100.00
11/19/2015	ESE	Draft Motion for Conditional Certification	275.00	1.00	275.00
11/20/2015	ESE	Research to Amend Complaint	275.00	0.50	137.50
11/23/2015	MLR	Review proposed Amended Complaint	400.00	0.50	200.00
12/03/2015	ESE	Draft Motion for Conditional Certification	275.00	4.00	1,100.00
12/04/2015	MLR	Review and edit Motion for Certification and brief; TC with Jon Harris; email to co-counsel re depositions	400.00	2.50	1,000.00
	ESE	Draft Motion for Conditional Certification	275.00	3.50	962.50
12/07/2015	MLR	Work on Motion for Certification	400.00	2.00	800.00
12/08/2015	MLR	Exchange emails with opposing counsel regarding depo dates; phone conference with Mike Weinman	400.00	1.00	400.00
	MLR	Work with Robert and John Harris in scheduling depositions	400.00	0.50	200.00
	ESE	Edit Motion for Conditional Cert	275.00	2.00	550.00
12/14/2015	ESE	Add new section to Mot. for Cond'tl. Cert.	275.00	1.50	412.50

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			Rate	Hours	
12/15/2015	MLR	TC with Jon Harris regarding status	400.00	0.25	100.00
	MLR	Review discovery responses and email co-counsel regarding same	400.00	0.25	100.00
12/21/2015	ESE	Research Motion to Reaffirm Dates	275.00	0.50	137.50
12/29/2015	MLR	Document review	400.00	1.00	400.00
01/04/2016	MLR	TC with Mike Weinman regarding cases status	400.00	0.75	300.00
01/06/2016	MLR	Review pleadings from similar cases in other jurisdictions	400.00	1.50	600.00
01/07/2016	ESE	Draft Reply- Motion to Amend Complaint	275.00	4.00	1,100.00
01/08/2016	ESE	Draft Reply- Motion to Amend Complaint	275.00	2.00	550.00
01/11/2016	MLR	Legal research on meter carrier issue	400.00	2.50	1,000.00
01/19/2016	MLR	Rev. file and prep for meeting with clients	400.00	2.00	800.00
	ESE	Prep for Depo Meeting	275.00	2.00	550.00
01/27/2016	ESE	Review NC Case Transcript	275.00	1.50	412.50
01/28/2016	ESE	Outside Sales Research	275.00	2.00	550.00
01/29/2016	MLR	Review file to prep for meeting with clients; meeting with clients in Jackson to prep for depositions; round trip travel.	400.00	8.00	3,200.00
02/01/2016	ESE	Document Production Review	275.00	3.00	825.00
02/02/2016	ESE	Travel to Jackson; attend Stewart Deposition	275.00	8.00	2,200.00
02/03/2016	ESE	Attend Anderson Deposition; travel	275.00	6.00	1,650.00
03/18/2016	ESE	T/c with Jim Johnson re: potential new opt-ins	275.00	0.50	137.50
03/31/2016	ESE	Review Response to Motion for Conditional Cert; send comments to Mike Weinmann	275.00	0.50	137.50
04/01/2016	ESE	Draft Motion for Leave to File Reply	275.00	0.50	137.50
04/05/2016	ESE	Meet with Steven Long; get declaration	275.00	1.00	275.00
04/07/2016	ESE	Meeting with potential witness or opt in and travel	275.00	5.00	1,375.00
04/19/2016	ESE	Draft Reply to Motion for Conditional Certification	275.00	4.00	1,100.00
04/22/2016	ESE	Draft Reply to Motion for Conditional Certification	275.00	5.00	1,375.00
	MLR	Work on Reply to Response in Opposition to Conditional Cert.	400.00	1.00	400.00
04/28/2016	ESE	Travel and attend status conference in Jackson with Judge Bryant and review file to prepare for same	275.00	6.00	1,650.00
07/26/2016	MLR	Receipt and review Report and Recommendation from the Court.	400.00	0.50	200.00

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			Rate	Hours	
08/08/2016	MLR	TC with co-counsel; TC with Jon Harris regarding objection to Magistrate; review file; meeting with Emily Emmons regarding same	400.00	1.00	400.00
08/10/2016	MLR	Exchange emails with co-counsel; emails with Jon Harris; meeting with Emily Emmons	400.00	0.50	200.00
	ESE	TC with Mike Weinman and clerk; meeting with Michael Russell	275.00	0.50	137.50
08/12/2016	MLR	Receipt and review Magistrate Judge's opinion; analysis of same; meeting with Emily Emmons regarding same	400.00	1.00	400.00
	ESE	Draft stipulation; email to OC; meeting with Michael Russell	275.00	1.00	275.00
09/13/2016	MLR	Review file and email Jon Harris re: notice	400.00	0.25	100.00
09/14/2016	MLR	Receive and review defendant's proposed notice; telephone conference with Jon Harris	400.00	0.50	200.00
09/28/2016	MLR	Review proposed notice; notes to file; email Jon Harris	400.00	0.50	200.00
	ESE	Research opt-ins and costs	275.00	0.50	137.50
10/03/2016	MLR	Review proposed documents from Jon Harris; telephone conference with Mike Weinman	400.00	1.00	400.00
10/04/2016	MLR	Finalize notice and conference with co-counsel regarding notice	400.00	0.50	200.00
10/06/2016	MLR	Review proposed Agreed Order and respond to defendant regarding order	400.00	0.25	100.00
	ESE	File review	275.00	0.25	68.75
10/28/2016	MLR	Check on status of opt ins	400.00	0.50	200.00
10/31/2016	MLR	Review consent forms	400.00	0.25	100.00
11/17/2016	ESE	File Review	275.00	0.25	68.75
12/15/2016	MLR	Review proposed consent motion and request for scheduling conference; email opposing party regarding conference; meeting with Emily Emmons and Paralegal regarding status and future course	400.00	1.00	400.00
12/20/2016	MLR	Receive email from Calkins; letter to client regarding statute of limitations issue; left voice mail for Calkins	400.00	0.50	200.00
01/03/2017	MLR	Review email traffic regarding Malone Rd. facility issue; prepare memo to file regarding same	400.00	0.50	200.00
	MLR	Telephone conference with Brandon McCollins; email John Harris regarding telephone conference with McCollins	400.00	0.50	200.00
01/04/2017	MLR	Telephone conference with Jon Harris regarding Malone Road facility; work on proposed pleadings addressing same	400.00	1.50	600.00
01/09/2017	MLR	Consult with co-counsel on Defendant; proposed edits to motion; email Jon Harris regarding motion	400.00	0.75	300.00

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			Rate	Hours	
01/12/2017	ESE	File Motion to Extend Deadline	275.00	0.50	137.50
01/17/2017	MLR	Research FLSA settlement in related case	400.00	1.00	400.00
01/18/2017	MLR	Telephone conference with Jon Harris; telephone conference with Mike Weinman; review file	400.00	2.00	800.00
01/19/2017	ESE	TC with Mike Weinman; TC with Rachael re: new opt ins	275.00	0.50	137.50
01/20/2017	MLR	Telephone conference with Mike Weinman; meeting with Emily Emmons; work on scheduling mediation; exchange emails with opposing counsel regarding mediation	400.00	1.00	400.00
01/26/2017	MLR	Exchange emails with counsel and work on rescheduling scheduling conference with all involved counsel	400.00	0.50	200.00
	MLR	Receive and review emails regarding scheduling conference	400.00	0.25	100.00
01/30/2017	ESE	TC & emails with Rachael re: new opt ins	275.00	0.50	137.50
02/06/2017	MLR	Review file and begin prep for mediation	400.00	1.00	400.00
02/07/2017	MLR	Review file; telephone conference with Mike Weinman; email to Jon Harris	400.00	1.00	400.00
02/08/2017	MLR	Begin work on mediation statement	400.00	2.00	800.00
	MLR	Receive and review new opt ins	400.00	0.25	100.00
02/09/2017	MLR	Receive and review order on Defendant's motion to communicate with potential class members; notes to file regarding same	400.00	0.50	200.00
02/15/2017	MLR	Review file; prep for mediation; exchange emails with Mike Weinman regarding damages	400.00	0.50	200.00
02/16/2017	MLR	Continue work on mediation statement	400.00	1.50	600.00
02/17/2017	MLR	Continue work on mediation statement	400.00	1.00	400.00
02/20/2017	MLR	Telephone conference with Jon Harris regarding date needed for settlement demand and damages calculation	400.00	0.25	100.00
	MLR	Review spreadsheet with data from opt in interviews; emails co-counsel regarding mediation and possible settlement offer	400.00	0.25	100.00
	MLR	Conference call with Mike Weinman regarding damages calculations and mediation strategy	400.00	0.50	200.00
02/21/2017	MLR	Review spreadsheet with summary judgment information for Defendant; email co-counsel regarding same	400.00	0.50	200.00
	MLR	Work on pre-mediation statement	400.00	1.50	600.00
02/27/2017	MLR	Conference call with Emily Emmons to prep for mediation; review file materials to prep for mediation	400.00	1.00	400.00
02/28/2017	MLR	Attend mediation and pre-mediation meeting with co-counsel	400.00	9.00	3,600.00
	ESE	Attend Mediation	275.00	9.00	2,475.00

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			Rate	Hours	
03/06/2017	MLR	Meeting with Emily Emmons regarding finalizing settlement	400.00	0.25	100.00
03/14/2017	MLR	Review and revise motion for settlement approval	400.00	1.00	400.00
03/15/2017	MLR	Work on Motion to Approve Settlement	400.00	2.00	800.00
03/16/2017	MLR	Confer with Mike Weinman regarding finalizing settlement	400.00	0.50	200.00
03/20/2017	MLR	Telephone conference with Mike Weinman	400.00	0.25	100.00
	MLR	Review and revise joint motion for settlement and settlement agreement	400.00	0.75	300.00
		For Current Services Rendered		157.75	52,100.00

Recapitulation

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Michael Russell	69.75	\$400.00	\$27,900.00
Emily Emmons	88.00	275.00	24,200.00

Expenses

02/03/2016	Mileage (EE)	130.00
03/07/2016	Deposition expense - Alpha Reporting Corp.	979.60
04/08/2016	Mileage (EE)	137.00
04/28/2016	Mileage to/from Jackson for status conference.	137.00
04/28/2016	Mileage to/from Jackson.	137.00
10/13/2016	Copies - Office Max.	15.68
	Total Expenses	1,536.28
	Total Current Work	53,636.28
	Balance Due	<u>\$53,636.28</u>

Optional:

Credit Card Type: Visa _____ Mastercard _____ American Express _____

Payment Amount \$ _____

Credit Card Number _____ Exp. Date _____

Signature _____

Draft Statement Run Totals 05/29/2017

Statements Printed:	1
Hours:	157.75
Fees:	52,100.00
Expenses:	1,536.28